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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

	X	
	:	
In re	:	Chapter 11
	:	
CHRYSLER LLC, <i>et al.</i> ,	:	Case No. 09-50002 (AJG)
	:	
Debtors.	:	(Jointly Administered)
	:	
	X	

**LIMITED OBJECTION OF BOB MAYBERRY CHRYSLER, DODGE, JEEP,
INC., TO DEBTORS’ OMNIBUS MOTION TO REJECT EXECUTORY
CONTRACTS WITH CERTAIN DOMESTIC DEALERS**

Bob Mayberry Chrysler, Dodge, Jeep, Inc. (“Bob Mayberry”), files this limited objection to the Omnibus Motion of Debtors and Debtors in Possession for an Order, Pursuant to Sections 105, 365 and 525 of the Bankruptcy Code and Bankruptcy Rule 6006, (A) Authorizing the Rejection of Executory Contracts and Unexpired Leases with Certain Domestic Dealers and (B) Granting Certain Related Relief (the “Rejection Motion”) [Docket No. 780], and in support thereof states as follows:

1. On May 14, 2009, Chrysler, LLC, and the related entities (collectively, “Chrysler”) filed the Rejection Motion. On Exhibit A to the Rejection Motion, Chrysler lists Bob Mayberry’s Chrysler, Dodge, and Jeep dealership in Monroe, North Carolina, as one of the 789 dealerships that are to be rejected.

2. Bob Mayberry objects to the Rejection Motion on the limited grounds that Bob Mayberry believes that its inclusion on Exhibit A represents a mistake by Chrysler and that Bob Mayberry can demonstrate to the Court, and to Chrysler, that rejection of the executory dealership agreements between Bob Mayberry and Chrysler is not in the best interest of the Chrysler debtors’ estates and will not be beneficial to these estates. On the contrary, assumption of the Bob Mayberry dealership agreements, and their assignment to the purchaser at the asset sale, is beneficial to Chrysler and the estates and is in their best interest.

ARGUMENT

I. Chrysler’s criteria.

3. In the Rejection Motion, Chrysler stated generally the criteria it employed in the selection of dealerships to be rejected pursuant to the Rejection Motion. These criteria were stated in paragraph 37 to include:

- (a) the dealer’s—
 - (i) brand affiliations;
 - (ii) raw sales volume;
 - (iii) sales performance relative to its Minimum Sales Responsibility;
 - (iv) location;
 - (v) type of market;

- (vi) facilities;
 - (vii) customer services;
 - (viii) history of experience; and
 - (ix) market share;
- (b) the planning potential for the dealership; and
- (c) other factors.

4. Additionally, Chrysler stated in paragraph 38 that there were “external metrics” that were employed by Chrysler in reaching their decision with regard to each dealership, which included:

- (a) new vehicle registration information for the Debtors’ and other manufacturers’ comparable products, indicating the location of new vehicle registrations within the market and the location of registrations of new motor vehicles sold by each dealer;
- (b) demographic data including—
 - (i) current population and household density;
 - (ii) anticipated shift of population and household density; and
 - (iii) average household income;
- (c) the average distance to the nearest dealer by manufacturer for each locality; and
- (d) competing manufacturers’ market share within the locality.

5. Bob Mayberry analyzes each of these criteria below, which leads to the conclusion, with the application of these criteria to the facts relating to Bob Mayberry, the benefits Bob Mayberry has obtained for Chrysler, and the demographics of the

marketplace in which Bob Mayberry operates, that the assumption of the Bob Mayberry dealership agreements is beneficial to Chrysler and the estates and is in their best interest.

II. Application of Chrysler's Criteria.

A. Bob Mayberry's performance factors.

1. Brand affiliations.

6. Bob Mayberry currently sells all of Chrysler's brands and lines—Chrysler, Dodge, Dodge Truck, and Jeep—and has done so since 1984. Therefore, Bob Mayberry scores as high on this metric as any dealership can.

2. Raw sales volume.

7. The following table sets out Bob Mayberry's New Vehicle Sales of Chrysler products for the last three calendar years, and it compares these sales to the average sales by all Chrysler dealers within Chrysler's Southeast Business Center (North and South Carolina, Tennessee, Georgia, Florida, and Alabama) and average sales by all Chrysler dealers of a comparable size to Bob Mayberry that are within the Southeast Business Center (the "Southeast Business Center Group"):

New Vehicle Sales	2008	2007	2006
Bob Mayberry Sales	378	600	587
Southeast Business Center Group Average	358	495	459
Bob Mayberry Comparison	106%	121%	128%
Southeast Business Center Average	311	460	472
Bob Mayberry Comparison	122%	130%	124%
National Average	287	NA	379
Bob Mayberry Comparison	132%	NA	155%

Source: Chrysler's Dealer Scorecard

8. This comparison shows that Bob Mayberry's sales, throughout each of these years, was substantially in excess of the national average sales by Chrysler dealers,

substantially in excess of the average sales by Chrysler dealers within the Southeast Business Center, and substantially in excess of the average sales by Chrysler dealers within Bob Mayberry's Group within the Southeast Business Center.

9. This chart also shows that Chrysler has recently had its difficulties with new vehicle sales nationwide and in the Southeast Business Center region. As with all automobile manufacturers, Chrysler's sales were down substantially in 2008, and Bob Mayberry's sales were down in 2008 as well. However, Bob Mayberry's sales have consistently exceeded the sales of its peers in all three years according to Chrysler's own data. Therefore, by this metric of raw sales volume, Bob Mayberry is currently and consistently has been "pulling its weight."

10. In addition to new vehicle sales, "raw sales volume" would include sales of Chrysler parts. Bob Mayberry shows excellent performance for Chrysler on this metric:

Retail/Wholesale Parts Purchases	2008	2007	2006
Bob Mayberry Purchases	\$1,795,122	\$2,031,610	\$1,702,257
Southeast Business Center Group Average	\$845,698	\$879,247	\$848,989
Bob Mayberry Comparison	212%	231%	201%
Southeast Business Center Average	\$849,103	\$881,211	\$861,253
Bob Mayberry Comparison	211%	231%	198%
National Average	\$746,107	\$724,160	\$675,961
Bob Mayberry Comparison	241%	281%	252%

Source: Chrysler's Dealer Scorecard

11. Bob Mayberry's purchases of new parts from Chrysler have been running well over *twice* the average purchases of such parts by Chrysler dealers, whether measured within the Southeast Business Center Group, the Southeast Business Center, or nationwide.

12. This data indicates that Chrysler owners, who may have purchased their vehicles from other dealers, will come to Bob Mayberry for service. This shows that Bob Mayberry is an excellent dealer for Chrysler and has an excellent reputation and experience with Chrysler owners.

13. The following metric further puts the new vehicle raw sales volume in perspective.

3. Sales performance relative to Minimum Sales Responsibility.

14. Chrysler has set Minimum Sales Responsibility standards for the sale of new vehicles by its dealers. Bob Mayberry's New Vehicle Sales as a percentage of Chrysler's Minimum Sales Responsibility are set out in the following table for the last three calendar years. This table compares these percentages to the average percentage of Chrysler's Minimum Sales Responsibility for these years for all Chrysler dealers within the Southeast Business Center Group, within the Southeast Business Center, and nationwide:

Sale Performance Relative to Minimum Sales Responsibility	2008	2007	2006
Bob Mayberry	101%	111%	107%
Southeast Business Center Group Average	102%	108%	97%
Southeast Business Center Average	106%	111%	109%
National Average	111%	113%	111%

Source: Chrysler's Dealer Scorecard

15. This comparison shows that Bob Mayberry has generally tracked the average performance on the Minimum Sales Responsibility for both the Southeast Business Center and Group averages during these three years and, with only some minor slippage in 2008, the national average performance on this metric. The most important conclusion from this chart is that, in every year, Bob Mayberry's sales have exceeded

Chrysler's Minimum Sales Responsibility requirements, including the difficult sales year of 2008.

16. By all measures, Bob Mayberry has performed well above Chrysler's expectations throughout the last three years. In 2009, data is currently available from Chrysler for only the month of January, and Bob Mayberry's sales in that month were *twice* the Minimum Sales Responsibility set by Chrysler. Thus, the Minimum Sales Responsibility criterion clearly points towards Chrysler's best interest lying in retaining Bob Mayberry as a dealer.

4. Location.

17. Bob Mayberry is located on Highway 74 in Monroe, North Carolina, which is in Union County. Monroe is part of the Charlotte Metropolitan Statistical Area, an MSA that has an estimated population of more than 1.7 million. According to the United States Census Bureau, the Charlotte MSA is the 36th largest MSA in the United States and, of those MSAs with populations of over one million, it is the *seventh* fastest growing MSA.

18. Highway 74 is a divided, four-lane highway that leads directly into the center of Charlotte in one direction and Monroe in the other. There is a traffic light at the dealership, so the dealership may be readily accessed from either direction.

19. Traffic on Highway 74 in Monroe is quite brisk, as the daily traffic count in front of Bob Mayberry's facilities exceeds 50,000 vehicles.

20. Bob Mayberry's nearest Chrysler competitor is Keffer Chrysler Jeep Dodge, which is located about 12 miles away in Charlotte. As shown below, there is a substantial market in Monroe and Union County, which has been well served by Bob

Mayberry. Bob Mayberry and Keffer do not duplicate each other in sales area; rather each prevents the opening of a large hole in Chrysler's sales coverage.

21. Thus, there is no question that Bob Mayberry is sited at an excellent location.

5. Type of market.

22. Bob Mayberry is *not* located in a rural market distant from any metropolitan area. On the contrary, Bob Mayberry is the *only* Chrysler dealer located in Union County, which, according to the United States Census Bureau, had a population of 193,255 in 2008 and experienced a population growth of 56 percent from 2000 to 2008. In 2008, Union County was the *thirteenth* fastest growing county in the entire United States.

23. Further, the Census Bureau states that Union County's median household income in 2007 was \$60,612. By comparison, the median household income in 2007 for all of North Carolina was \$44,772 and for the entire United States was \$50,740.

24. Therefore, Monroe is itself a substantial metropolitan area with a populace that has a substantial annual income.

25. Bob Mayberry is located about eight miles south of Mecklenburg County (which contains Charlotte) and about 21 miles from the city-center of Charlotte. Charlotte is the hub of a contiguous metropolitan statistical area that encompasses a population of 1.7 million. Highway 74 is a major artery connecting the city center of Charlotte with Monroe, and Bob Mayberry's facility is located on the Charlotte side of Monroe.

26. Thus, Bob Mayberry's market is a robust, rapidly growing metropolitan area with a median household income substantially above the national average. Bob Mayberry is well situated to remain an important contributor to Chrysler's reputation and bottom line.

6. Facilities.

27. Bob Mayberry maintains its showroom and service facilities in excellent condition. The facilities have been continually renovated by Bob Mayberry without the need for any request from Chrysler do to so. The service department is state of the art, with 19 service bays, an automated car wash, air conditioning, and an electronic pricing board. On Chrysler's Dealer Scorecard, Bob Mayberry's facilities and location currently are rated, and have consistently been rated, at 42 points out of a maximum of 50 points.

28. In addition to improvements within the building, Bob Mayberry has spent a substantial amount of money to increase its display area along Highway 74. In January 2003, Bob Mayberry paved approximately one-half acre of formerly unimproved surrounding land, which enabled the displaying of 20 additional new vehicles along Highway 74 plus an additional 60 new vehicles. Subsequent to the paving, Bob Mayberry dramatically improved their lighting along the entire front of the dealership.

7. Customer service.

29. Bob Mayberry is rated by Chrysler as a Five Star dealer. In order to obtain this rating, a dealer must contact every sales and service customer for feedback after the sale or service, survey dealership employees on a regular basis, act on feedback given by customers and employees, maintain high survey ratings, provide a detailed training program of on-line and classroom study to employees, and keep the dealership

grounds up to Chrysler's standards. Dealers work with a Five Star consultant who coaches management in Five Star processes. Once the consultant feels that the dealer is ready, the consultant will call in a validation team to inspect the dealer. If the dealer passes the validation process, a separate certification team will come in to officially certify the dealer as a Five Star dealership.

30. The benefit to Chrysler of this program is increased quality of service and customer satisfaction reports, increased profits, customer retention, and improved relations with their high-standard dealers. It is not an easy process to obtain a Five Star rating, but Bob Mayberry has earned and maintained this rating from the inception of the Five Star program.

31. In the most current (March 2009) Dealer Scorecard from Chrysler, Bob Mayberry was rated, by Chrysler, with a 12-month average sales satisfaction index of 96.7 percent and a 12-month average customer satisfaction index of 94.2 percent. These measurements are further evidence of the benefit received by Chrysler from the meticulous efforts of Bob Mayberry to provide the best customer service.

32. In just the few days since the Rejection Motion became public knowledge, Bob Mayberry has received numerous letters from customers, businesses, and organizations expressing their satisfaction with Bob Mayberry in selling and maintaining their vehicles and praising Bob Mayberry as a solid civic citizen. A sampling of these letters is attached as Exhibit A. While admittedly anecdotal evidence, these letters show a strong commitment by the community to Bob Mayberry and indicate the potential loss to Chrysler from rejection of Bob Mayberry's dealership agreements.

8. History of experience.

33. Robert Mayberry, Sr. and Robert Mayberry, Jr. founded the dealership 25 years ago. They have a combined experience of 75 years in the auto industry. Mark Brannock, the chief financial officer, is a CPA with 13 years experience with Bob Mayberry.

34. In addition to the experience of the ownership team, many of Bob Mayberry's employees have a minimum of ten years of service with the company. With less than ten percent turnover every year, Bob Mayberry operates a very stable dealership and has been able to build its success around repeat and referral business. This success is directly attributable to its stable workforce and lack of turnover.

35. On the history of experience metric, Bob Mayberry ranks very high.

9. Market share.

36. It is not clear what is meant by this metric, how wide its geographic net is to be cast, and how it is relevant to the retention of Bob Mayberry as a dealer. The relative desirability of Chrysler vehicles in general compared to other manufacturers' products could mask the determination of whether Bob Mayberry is performing in an exemplary manner or not. What is clear from Chrysler's Dealer Scorecard is that Bob Mayberry *is* performing quite well for Chrysler. As discussed above with regard to raw sales volume (paragraphs 7 through 13), Bob Mayberry has outperformed by substantial margins, in each of 2008, 2007, and 2006, the average of all Chrysler dealers nationwide, the average of all Chrysler dealers in the Southeast Business Center, and the average of all Chrysler dealers in the Southeast Business Center Group. Bob Mayberry has outperformed the average of all of these groups not only with regard to new vehicle sales,

but also with parts purchases from Chrysler. Further, as shown in paragraphs 39 through 42 below, Bob Mayberry is currently ranked by Chrysler in the top 13 percent of its dealers. Clearly, the retention of Bob Mayberry is in the best interest of Chrysler and its estates.

B. The planning potential for Bob Mayberry.

37. The planning potential is a metric created by Chrysler to measure expected new vehicle sales within a particular market. On the March 2009 Dealer Scorecard, Chrysler rated Bob Mayberry with a planning potential of 454. This means that under ideal and unchanged economic conditions, Bob Mayberry would be expected to sell 454 new vehicles in their market in that year based on Chrysler's calculation of the market in which Bob Mayberry operates. In December 2008 and 2007, Chrysler had assigned Bob Mayberry a planning potential of 618 and 737 new vehicles, respectively.

38. The planning potential set for Bob Mayberry and other Chrysler dealers is an ambitious goal, but Bob Mayberry is ready to employ its best efforts to attempt to meet that goal. In the past and currently, Bob Mayberry has certainly met Chrysler's Minimum Sales Responsibility. However, the mere fact that Chrysler has recently set such a high goal for Bob Mayberry is indicative that Chrysler's own records show the value of the market in which Bob Mayberry operates. To surrender that market to Chrysler's competition through the rejection of the dealership agreements with Bob Mayberry cannot be in the best interest of Chrysler and its estates.

C. Other factors.

39. Chrysler prepares and distributes to its dealers a monthly Dealer Scorecard that lets them know how they are performing on several criteria, many of which have

been individually discussed above. The bottom line of the Dealer Scorecard is a percentile ranking of the dealer based upon a weighting of the various criteria as determined by Chrysler. For example, a percentile ranking of 25 percent would mean that the dealer ranks in the top 25 percent of Chrysler's dealers.

40. At the end of 2006, 2007, and 2008, and in March 2009, Bob Mayberry was ranked as follows:

	March			
Bob Mayberry Dealership Percentile Ranking	2009	2008	2007	2006
Southeast Business Center Group	15	24	13	18
Southeast Business Center	13	15	9	15
National	13	18	9	14

Source: Chrysler's Dealer Scorecard

41. In all of these rankings, Bob Mayberry has never been ranked below the top 24 percent. In the most current ranking, Bob Mayberry was ranked in the top 13 percent of Chrysler's dealers nationwide, and in the top 13 percent of dealers in the Southeast Business Center.

42. This high ranking, basically in the top one-eighth of all of Chrysler's dealers, implies that the inclusion of Bob Mayberry in the Rejection Motion was an oversight, and that the continuation of Bob Mayberry as a dealer is in the best interest of Chrysler and its estates.

43. Further, Bob Mayberry has been a team player in that it has long had its floorplanning through Chrysler Financial. On the Dealer Scorecards, including the latest for March 2009, Bob Mayberry has scored the maximum points for its retail penetration of financing its vehicle sales through Chrysler Financial. In all of those years, Bob Mayberry has never been out of trust with Chrysler Financial. Further, throughout the relationship with Chrysler, Bob Mayberry has never had a single warranty audit.

44. Bob Mayberry has remained a profitable dealership throughout the years, including the very difficult year of 2008, and was profitable in the first two months of 2009, showing an operating loss for the first time in March 2009. This fact shows that Bob Mayberry is a strong dealership that has the capability to weather the current economic downturn and emerge as a strong dealership that is beneficial to Chrysler.

D. New vehicle registration information.

45. In paragraph 38 of the Rejection Motion, Chrysler identified “new vehicle registration information for the Debtors’ and other manufacturers’ comparable products, indicating the location of new vehicle registrations within the market and the location of registrations of new motor vehicles sold by each dealer” as an external metric drawn upon by Chrysler in determining which dealers would be affected by the Rejection Motion.

46. It is not clear what is meant by this metric, how wide its geographic net is to be cast, and how it is relevant to the retention of Bob Mayberry as a dealer. The relative desirability of Chrysler vehicles in general compared to other manufacturers’ products could mask the determination of whether Bob Mayberry is performing in an exemplary manner or not. Further, registrations in Union County of new Chrysler vehicles are quite likely the results of sales by Bob Mayberry, but not necessarily, and that number would overlook sales by Bob Mayberry to nearby residents of Mecklenburg County. Therefore, Bob Mayberry submits that this metric is not probative as to whether Bob Mayberry should be retained as a Chrysler dealer.

47. However, the rating of Bob Mayberry on Chrysler’s Dealer Scorecard *is* relevant, and what is clear from the Dealer Scorecard is that Bob Mayberry is performing

quite well for Chrysler. As discussed above with regard to raw sales volume (paragraphs 7 through 13), Bob Mayberry has outperformed by substantial margins, in each of 2008, 2007, and 2006, the average of all Chrysler dealers nationwide, the average of all Chrysler dealers in the Southeast Business Center, and the average of all Chrysler dealers in the Southeast Business Center Group. Bob Mayberry has outperformed the average of all of these groups not only with regard to new vehicle sales, but also with parts purchases from Chrysler. Further, as shown in paragraphs 39 through 42 above, Bob Mayberry is currently ranked by Chrysler in the top 13 percent of its dealers. Clearly, the retention of Bob Mayberry is in the best interest of Chrysler and its estate.

E. Demographic data.

1. Current population and household density.

48. As stated above, Union County's population was 193,255 in 2008. Union County has a land area of 637.37 square miles, which yields a population density of 303.2 persons per square mile. As set out in more detail herein, Bob Mayberry is located within a robust, rapidly growing, metropolitan region. This is not an area that Chrysler would want to simply abandon to its competition.

2. Anticipated shift of population and household density.

49. In 2008, Union County was the *thirteenth* fastest growing county in the entire United States. The Charlotte MSA is the 36th largest MSA in the United States and, of those MSAs with populations of over one million, it is the *seventh* fastest growing. Therefore, the strong population demographics long existing in Bob Mayberry's service area will only grow stronger in the future.

3. Average household income.

50. The median household income in Union County in 2007 was \$60,612. In North Carolina, it was \$44,772, and in the United States, it was \$50,740. Thus, Bob Mayberry's market has a substantially higher average household income than the United States as a whole and North Carolina. Further, the Charlotte Metropolitan Statistical Area, which includes the City of Monroe and Union County, was rated in June 2008 as having *the strongest* economy among all 361 United States MSAs, according to POLICOM Corporation, an independent economic research firm located in Florida that specializes in analyzing local and state economies. There is no question that Bob Mayberry is located in a robust market and that continuation of Bob Mayberry will be greatly beneficial to Chrysler.

F. The average distance to the nearest dealer by manufacturer within the locality.

51. The distance to the nearest competitors' dealers is set out below:

Distance to Nearest Dealer	miles
Chevrolet	0.25
Pontiac, Buick, GMC	1
Hyundai	1
Kia Motors	1.25
Honda	3
Ford	4
Toyota	8
Average	2.64

52. All of these dealers are in Union County, and all but Honda, Ford, and Toyota are in Monroe. Bob Mayberry is located close to its competition (within 1.25 miles of four dealerships that compete *with* Chrysler, and within four miles of two additional such dealerships), thereby facilitating sales of Chrysler vehicles to potential

customers who are comparison shopping, but Bob Mayberry is 12 miles from the nearest competing Chrysler dealership, so Bob Mayberry will not be merely cannibalizing what would otherwise be a Chrysler sale. In the absence of Bob Mayberry, a substantial number of these Chrysler sales will simply be lost by Chrysler to its competition just down the street in Monroe and Union County.

53. If Bob Mayberry is not removed from the Rejection Motion, many of these potential customers will be lost to Chrysler, as they may not wish to drive the 12 miles to Keffer Chrysler Jeep Dodge in Charlotte to examine Chrysler's vehicles. This metric clearly points toward the value of Bob Mayberry to Chrysler and its estates.

G. Competing manufacturers' market share within the locality.

54. This metric addresses more the relative desirability of Chrysler vehicles in general compared to other manufacturers' products rather than the determination of whether Bob Mayberry is performing in an exemplary manner or not. Further, registrations in Union County of new Chrysler vehicles are quite likely the results of sales by Bob Mayberry, but not necessarily, and that number would overlook sales by Bob Mayberry to nearby residents of Mecklenburg County. Therefore, Bob Mayberry submits that this metric is not probative as to whether Bob Mayberry should be retained as a Chrysler dealer.

55. As stated above, the rating of Bob Mayberry on Chrysler's Dealer Scorecard is relevant, and what is clear from the Dealer Scorecard is that Bob Mayberry *is* performing quite well for Chrysler. As discussed above with regard to raw sales volume (paragraphs 7 through 13), Bob Mayberry has outperformed by substantial margins, in each of 2008, 2007, and 2006, the average of all Chrysler dealers nationwide,

the average of all Chrysler dealers in the Southeast Business Center, and the average of all Chrysler dealers in the Southeast Business Center Group. Bob Mayberry has outperformed the average of all of these groups not only with regard to new vehicle sales, but also with parts purchases from Chrysler. Further, as shown in paragraphs 39 through 42 above, Bob Mayberry is currently ranked by Chrysler in the top 13 percent of its dealers. Clearly, the retention of Bob Mayberry is in the best interest of Chrysler and its estate.

III. Summary.

A. Chrysler's burden of proof.

56. Bob Mayberry notes Chrysler's legal analysis in paragraphs 42 through 45 of the Rejection Motion that courts will ordinarily defer to the debtor's business judgment in considering whether to grant a motion to assume, assume and assign, or reject an executory contract. However, as stated by the authorities cited by Chrysler, the debtor must establish that such action will benefit the debtor's estate. *COR Route 5 Co., LLC v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d 373, 382 (2d Cir. 2008); *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006).

B. Rejection of Bob Mayberry's agreements is not in Chrysler's interest.

57. In paragraph 12 of the Rejection Motion, Chrysler speaks of "longstanding dealerships that no longer were in the best or growing locations" and of rural locations that serve "a diminishing population of potential consumers." Chrysler observes that some "facilities became outdated" and other locations "faced declining traffic count and declining populations."

58. The Rejection Motion concerned 789 dealers, and necessarily could not separately present evidence to establish that the rejection of each and every one of these dealership agreements is in the best interest of Chrysler and its estates. By necessity, the Rejection Motion spoke in conclusory language with regard to meeting this requirement for each dealer and did not include specific evidence relating to Bob Mayberry; rather, the Rejection Motion spoke in paragraph 12 in generalities. However, because the Rejection Motion dealt in only generalities and conclusory language, Chrysler has not met its burden of offering evidence to show how its dealership agreements with Bob Mayberry are burdensome to Chrysler's estates and would cause financial detriment to Chrysler. Nor has Chrysler demonstrated that rejecting its agreements with Bob Mayberry would benefit Chrysler's estates. Thus, Chrysler has not met its burden of proof required by the authorities cited by Chrysler.

59. In contrast, pursuant to the information and evidence presented above, Bob Mayberry has demonstrated that rejection of its dealership agreements is *not* in the best interest of Chrysler and its estates. By Chrysler's own Dealer Scorecard reports, Bob Mayberry is a highly valuable dealership to Chrysler and is performing in the top 13 percent of Chrysler's dealers. Chrysler seeks in the Rejection Motion to reject 789 out of its current 3,181 dealers, which is a rejection of approximately 25 percent of these dealers. One would expect that the rejected dealers would generally comprise the *bottom* 25 percent of Chrysler's dealers as rated by the Dealer Scorecard, and certainly would not include a dealer that placed in the *top* 13 percent in this rating. This one metric, entirely by itself, clearly indicates that rejection of the Bob Mayberry agreement is not in the best interest of Chrysler.

60. Bob Mayberry is indeed a “longstanding dealership,” but it cannot be said that Bob Mayberry is “no longer in the best or growing location,” nor can it be said that Bob Mayberry is in a “rural location that serves a diminishing population of potential consumers” or is in a location that “faces declining traffic count and declining population.”

61. In contrast to these general statements regarding dealers that Chrysler wishes to reject, and perhaps would be justified in rejecting, Bob Mayberry is located in a Metropolitan Standard Area that includes over 1.7 million people, is the 36th largest MSA in the United States, and, of those MSAs with populations of over one million, is the seventh fastest growing MSA. Further, Bob Mayberry is located in a county that is the thirteenth fastest growing county in the entire United States, has experienced a population growth of 56 percent from 2000 to 2008, and had a population of 193,255 in 2008. The median household income in Union County was \$60,612 in 2007, compared to \$44,772 for all of North Carolina and \$50,740 for the United States as a whole. Thus, Bob Mayberry is not located in some declining, rural backwater, but is instead in a rapidly growing metropolitan area with median household income substantially above the national average. Further, Bob Mayberry’s facility is not off the beaten path where these masses of potential customers cannot locate it, but is instead directly on a major artery that carries in excess of 50,000 vehicles containing potential customers every day, and there is a traffic light to facilitate their entry from either direction.

62. In addition, Bob Mayberry is within 1.25 miles of four dealerships that compete *with* Chrysler, and within four miles of two additional such dealerships, thereby facilitating sales of Chrysler vehicles to potential customers who are comparison

shopping, but Bob Mayberry is 12 miles from the nearest competing Chrysler dealership, so Bob Mayberry will not be merely cannibalizing what would otherwise be a Chrysler sale. In the absence of Bob Mayberry, a substantial number of these Chrysler sales will simply be lost by Chrysler to its competition just down the street in Monroe and Union County.

63. Nor is Bob Mayberry's facility "outdated." Without any prodding from Chrysler, Bob Mayberry has continually renovated, updated, and maintained its sales and service facilities to remain fresh, clean, modern, convenient, and inviting to Chrysler customers.

64. Through the demographics of its location, the maintenance and updating of its facilities, and its strong customer allegiance, proven track record in selling Chrysler products, demonstrated willingness to be a "team player" in qualifying for Five Star status, and strong participation in floorplanning through Chrysler Financing, all contributing to its current 13 percentile rating in the Dealer Scorecard, Bob Mayberry is an exceedingly valuable dealer to Chrysler. Bob Mayberry has not set out herein a legalistic argument that Chrysler has failed by some technicality, or by a gnat's eyelash of the weight of evidence, to prove that rejection of the Bob Mayberry agreements is in the best interest of Chrysler's estates. On the contrary, Bob Mayberry, through the compelling evidence and arguments offered above, has shown that rejection of these agreements would be a ghastly error quite harmful to Chrysler's future sales and profitability.

65. Bob Mayberry submits that the points and authorities set forth above satisfy the requirements of Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York and that no separate brief of legal authorities is necessary.

WHEREFORE, for all the reasons set forth above, Bob Mayberry submits that the inclusion of Bob Mayberry on Exhibit A to the Rejection Motion is not in the best interest of Chrysler and its estates, and Bob Mayberry requests that the Rejection Motion, solely to the extent that it includes Bob Mayberry, be denied.

Dated this 26th day of May, 2009.

SHUMAKER, LOOP & KENDRICK, LLP

/s/ David M. Grogan

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